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October 12, 2021

VIA ECF

The Honorable Robert W. Lehrburger
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Vale S.A. v. BSG Resources Limited*, No. 19-cv-3619 (VSB) (RWL)

Dear Judge Lehrburger:

As counsel to Petitioner Vale S.A. ("Vale"), we write on behalf of Vale and Respondent the Joint Administrators of BSG Resources Ltd. ("BSGR") pursuant to the Court's Order of October 4, 2021, ECF No. 82, to provide a status update on the proceedings in the above-captioned case. The respective statements of Vale and the Joint Administrators are set forth below.

Statement of Vale

The sole outstanding issue at this time is Vale's May 14, 2021 motion to compel ("Motion to Compel") Benjamin (Beny) Steinmetz ("Steinmetz") to respond to the discovery requests served on him on March 21, 2020 (the "Discovery Requests") (ECF No. 71), in his capacity as alter ego of BSGR.

Background

On March 5, 2020, this Court entered judgment in favor of Vale against BSGR in excess of \$2 billion (the "Judgment") (ECF No. 51) arising from the enforcement of a London Court of International Arbitration ("LCIA") award (the "Award") that found that BSGR had fraudulently induced Vale to enter into a joint venture to develop mining rights in the Simandou region of Guinea (the "VBG Joint Venture") by, *inter alia*, concealing that it had procured those rights through bribery and corruption. Given Steinmetz's relationship with BSGR (which is

Hon. Robert W. Lehrburger, p. 2

short for “Beny Steinmetz Group Resources”), Vale sought post-judgment discovery from Steinmetz in aid of execution of the Judgment under Fed. R. Civ. P. 69(a)(2).

Specifically, BSGR obtained rights from the Guinean government in 2008 to develop a valuable iron ore mining concession in the Simandou region of Guinea, and approached Vale as a partner who could offer the capital and technical expertise for the project.¹ BSGR and Steinmetz personally repeatedly represented and warranted to Vale that BSGR had lawfully obtained its mining rights in Guinea and that it had disclosed all material documents and information concerning the mining concessions. After receiving these assurances, Vale entered into a joint venture with BSGR on April 30, 2010, and made an up-front payment of \$500 million and invested an additional \$750 million to develop the venture. Following an investigation into the concession, the Guinean Government determined that BSGR’s license had been obtained through bribery and corruption, and withdrew BSGR’s mining rights in April 2014. Vale subsequently commenced an arbitration claiming damages for fraudulent misrepresentation, breach of warranty, and frustration, and was awarded more than \$2 billion in damages, interest, and costs on April 4, 2019. In the Award, the LCIA tribunal concluded that BSGR obtained the Simandou mining rights by bribing Guinean government officials and deliberately hid its corrupt activities from Vale to fraudulently induce Vale to enter into the VBG Joint Venture.² In December 2020, Steinmetz was criminally convicted in Switzerland for fraud and other crimes related to BSGR’s acquisition of the mining concession in Guinea, which Steinmetz has appealed, and he was also sentenced to five years’ imprisonment for a separate scheme of bribery and fraud in Romania.³

Vale filed a petition for recognition and enforcement of the Award in this Court on April 23, 2019.⁴ Judge Broderick granted Vale’s petition on March 5, 2020, and entered judgment in favor of Vale against BSGR in the amount of \$2,172,833,761.15.⁵ As described in Vale’s Motion to Compel, Steinmetz has impeded Vale’s ability to recover on the Judgment by siphoning corporate funds out of BSGR, leaving a hollowed-out entity depleted of its most valuable assets. Vale has sought post-judgment asset discovery, including by serving the Discovery Requests on Steinmetz on March 31, 2020, at his home by hand delivery, by FedEx, and by email.⁶

Pending Motion and Requested Relief

After Steinmetz had ignored the Discovery Requests for several months, on October 9, 2020, counsel for Vale wrote to Steinmetz’s New York-based counsel at Kobre & Kim LLP (“Kobre”),⁷ requesting to meet and confer on the Discovery Requests. Kobre declined to engage, responding that they did not represent Steinmetz in connection with the Discovery Requests. On October 14, 2020, Steinmetz emailed counsel for Vale, claiming that he was not

¹ See ECF No. 1 for further details about the factual background described herein.

² *Vale S.A. v. BSG Resources Ltd.*, LCIA Arb. No. 142683, Award ¶¶ 1004-05, ECF No. 4-A.

³ See ECF No. 74-1, at 1; Nitsan Shafir, *Beny Steinmetz Sentenced to Five Years Jail in Romania* (Dec. 17, 2020), <https://en.globes.co.il/en/article-beny-steinmetz-sentenced-to-five-years-jail-in-romania-1001353614>.

⁴ Petition for Recognition and Enforcement, ECF No. 1.

⁵ ECF No. 51.

⁶ See ECF No. 73.

⁷ Kobre has recently appeared on Steinmetz’s behalf in related litigation against Vale in this District. See *In re Application of Benjamin Steinmetz*, No. 20-mc-00212-AJN (S.D.N.Y.).

Hon. Robert W. Lehrburger, p. 3

subject to this Court's jurisdiction and thus not required to respond to the Discovery Requests. Vale subsequently wrote to Judge Broderick on December 8, 2020, requesting that the Court order Steinmetz to respond to the Discovery Requests because Steinmetz is the alter ego of BSGR, or, in the alternative, to allow Vale to submit supplemental briefing on this issue.⁸ On April 29, 2021, Judge Broderick granted Vale leave to submit supplemental briefing in support of its request to compel Steinmetz to respond to the Discovery Requests.⁹

Vale submitted its Motion to Compel discovery from Steinmetz as the alter ego of BSGR on May 14, 2021,¹⁰ to which Steinmetz has never responded. Fed. R. Civ. P. 69(a)(2) entitles Vale to broad post-judgment discovery to assist in collection of the Judgment from the judgment debtor and its alter ego. In order to obtain such discovery from Steinmetz, Vale must make a *prima facie* showing that there is "at least some demonstration" that Steinmetz is the alter ego of BSGR.¹¹ The considerable evidence presented by Vale in the Motion to Compel far surpasses that requirement. As described in the Motion to Compel, other courts and tribunals have already concluded that Steinmetz – described by his business associates as the "big boss" and BSGR's "number 1" – controlled BSGR and its corrupt activities.¹² Vale has also demonstrated, *inter alia*, that Steinmetz drained multi-million dollar payments from BSGR for his personal use; entities within the Steinmetz corporate empire habitually engaged in self-dealing; BSGR shared ownership, officers, directors, and other personnel with other Steinmetz-affiliated entities; and BSGR was inadequately capitalized.¹³

Conclusion

Steinmetz has refused to respond to Vale's Discovery Requests for the last 18 months, and has resisted Vale's efforts to collect on the Judgment entered by this Court. Vale's Motion to Compel has been fully briefed since May 2021, and Vale respectfully requests that the Court issue an order to compel a discovery response and set a prompt deadline for Steinmetz's full compliance and production of documents.¹⁴

Statement of the Joint Administrators

The Joint Administrators of BSGR are not a party to Vale's pending Motion to Compel and take no position on Vale's pending Motion. The Joint Administrators do not join in Vale's characterizations of (1) the Motion and "Background" of the case, or (2) Vale's communications with Kobre.

⁸ ECF No. 66.

⁹ ECF No. 69.

¹⁰ ECF No. 71.

¹¹ ECF No. 72 at 1,7.

¹² *See, e.g.*, ECF No. 72 at 2 (quoting a Swiss criminal court, which found that "Benjamin STEINMETZ, as the actual head of BSGR, was the main beneficiary of the operation. All major decisions were made with his approval and he personally intervened in several stages of the corruption operation.").

¹³ *Id.* at 6-25.

¹⁴ Steinmetz has made a deliberate choice not only to refuse to comply with his discovery obligations, but to even engage with Vale or this Court. At the same time, Steinmetz has brought two separate lawsuits in this District, one filed by him in his personal capacity against Vale and Rio Tinto, and another filed by his companies against George Soros. *See In re Application of Benjamin Steinmetz*, No. 20-mc-00212-AJN (S.D.N.Y.); *BSG Res. (Guinea) Ltd. v. Soros*, No. 17-cv-02726 (JFK) (S.D.N.Y.).

Hon. Robert W. Lehrburger, p. 4

Respectfully submitted,

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cc: All Counsel via ECF